HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 28513 OF 1996

DATE: 25.1.2007

Between:

N. Panduranga Rao S/o Sriramulu, Hindu, aged about 45 years, working as Senior Clerk, Depot Manager's Office, APSRTC, Ongole, Prakasam District.

...Petitioner

AND

1.The Managing Director cum Vice Chairman, APSRTC, Musheerabad, Hyderabad and two others

....Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 28513 OF 1996

ORAL ORDER:

Questioning the proceedings dated 28.10.1996 issued by the second respondent, whereby the petitioner was informed that his claim for promotion to the post of Head Clerk against the existing vacancy at markapur, counting his seniority on par with Sri K. Chandrasekhar and Sri M. Venkateswarlu, was rejected, the present Writ Petition is filed.

Facts in brief are that the petitioner was appointed as Junior Assistant on 25.10.1996. He was subsequently promoted to the post of Senior Assistant (Personal) on 20.2.1987. He passed the lower personnel Management test in the year 1990. This test is prescribed as a qualification for promotion to the next higher post of Head Clerk. When the petitioner passed the said test in the year 1990, the post of Head Clerk was a Regional Post. The Rules also required that this LPM test would be conducted annually. The allegation of the petitioner is that the LPM test was last eld in 1990 when the petitioner passed the said test and that the next test was held only on 8.10.1995. During the interregnum the respondents, however, chose not to fill up any of the vacancies which had arisen in the post of Head Clerk. The post of Head Clerk, which was hitherto a regional post became a zonal

post from 1.1.1995. The petitioner who was 4th in the Seniority List of Senior Assistants in Nellore region became 29th in the Zonal Seniority List of Senior Assistants, thereby reducing his chances for promotion to the post of Head Clerk. Seeking a direction that he should be considered for promotion as Head Clerk, the petitioner filed Writ Petition No. 20084 of 1996 questioning the proceedings dated 28.4.1996 promoting Sri K. Chandrasekhar and Sri M. Venkateswarlu, as Head Clerks. The said Writ Petition was disposed of directing the respondents to consider the petitioner's case for promotion to the post of Head Clerk, in the existing vacancy, pending further orders. The petitioner submitted a representation on 5.10.1996 and as his request was rejected, vide proceedings dated 28.10.1996, the present Writ Petition is filed.

It is necessary to note that both Sri K. Chandrasekhar and Sri M. Venkateswarlu, who were promoted as Head Clerks vide proceedings dated 28.4.1996 and nine other Senior Assistants and Head Clerks vide proceedings dated 8.1.1995, had become eligible on their passing the lower personal management test only after 1995. The petitioner's grievance, in short, is that if the vacancies, which had arisen subsequent to 1990 had been filled up prior to 1995, and since none of these candidates had passed the lower personal management test by then, which test the petitioner had passed, he would have been entitled to be promoted to the post of Head Clerk.

While the submission of Sri M. Subba Reddy, learned counsel for the petitioner is no doubt persuasive, it cannot be lost sight of that it is for the respondents to decide as to when a vacancy should be filled up. The mere fact that a vacancy had arisen does not necessitates its been filled up immediately

thereafter. These are all matters for the employer to determine based on its requirements. No Mandamus can be issued by this Court to fill up a vacancy as soon as it has arisen. While filing up of the vacancy prior to 1995 may have resulted in the petitioner being promoted to the post of Head Clerk, as he had passed the lower personal management test by then, whereas the other candidates who were promoted in 1995-96 had not passed the requisite test, it is not for this court to issue a Mandamus to the respondents to fill up the vacancies as soon as it has arisen. Suffice to note that, in the counter affidavit filed by the respondents it is categorically stated that as and when vacancies arise the petitioner's case shall be considered for promotion of Head Clerk in accordance with his seniority and eligibility.

Taking this submission of the respondents on record, and inasmuch as the relief sought for in the Writ Petition cannot be granted, the Writ Petition is dismissed. However, in the circumstances, without costs.

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RAMESH RANGANATHAN
, J

Dated: 25.1.2007
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